

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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Case No. 04-34647 DDO

In Re:

Chapter 7

Kathleen Marie Hayes,

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

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TO: Debtor Kathleen Marie Hayes; her attorney Mary Jo A. Jensen-Carter; United States Trustee; and all other entities specified in Local Rule 1204 (a):

1. AmeriCredit Financial Services, Inc., ("AmeriCredit"), a secured creditor in this Chapter 7 proceeding, by and through duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing.

2. The court will hold a hearing on this motion on October 6<sup>th</sup> 2004, at 9:30 a.m., before the Honorable Dennis D. O'Brien, United States Bankruptcy Judge, in Courtroom No. 228a 200 Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than October 1st 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than September 27<sup>th</sup> 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on August 9, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 5005-4, 9006-1, 9013-1 and 9017-1. AmeriCredit requests relief from the automatic stay under § 362 of the Bankruptcy Code to foreclose its security interest in certain personal property of the debtor as defined below.

6. On May 28, 2002, the debtor, Kathleen Marie Hayes, executed a promissory note and security agreement in favor of AmeriCredit, in the original principal amount of \$15,377.35, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, a 2000 Mercury Sable, VIN # 1MEFM53S3YG642612. Proof of perfection of the security interest of AmeriCredit is attached hereto as **Exhibit "B"**.

7. The promissory note is in default for failure to make payments when due since June 27, 2004, a delinquency in the approximate amount of \$516.72. As of August 9, 2004, the amount due was a payoff balance of \$10,221.94. On information and belief, the value of the vehicle is \$6,325.00 and the debtor has no equity in the vehicle.

8. The loan is in default for failure to make payments when due. AmeriCredit seeks relief from the automatic stay to foreclose its personal property security interest in the vehicle.

9. Pursuant to 11 U.S.C. § 362(d)(1), a creditor may be granted relief from the automatic stay for cause, including lack of adequate protection. AmeriCredit believes that cause exists to grant it relief from the automatic stay to foreclose its personal property security interest, for the following reasons:

a. AmeriCredit has not been offered and is not being provided with adequate protection for its interest in the vehicle;

b. The vehicle subject to the security interest of AmeriCredit continues to depreciate and decline in value; and

c. AmeriCredit has been unable to verify current proof of insurance on the vehicle; and

d. The debtor has stopped making payments to AmeriCredit.

10. Pursuant to 11 U.S.C. § 362(d)(2), a creditor may be granted relief from the automatic stay, if there is no equity in the property which is the subject of the motion, and property is not necessary for an effective reorganization. Here, the debtor has no equity in the vehicle that is the subject of this motion, and the vehicle is not necessary for an effective reorganization in this Chapter 7 proceeding.

11. If any testimony is necessary on any of the facts relative to this motion, testimony will be given by DeMarlon Reed, or some other representative of the Movant, AmeriCredit Financial Services, Inc..

WHEREFORE, AmeriCredit requests entry of an Order granting the relief from the automatic stay of 11 U.S.C. § 362, to allow it to foreclose its personal property security interest

described above, and for such other and further relief as the court deems just and equitable under the circumstances.

Dated: September 14, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn  
Marilyn J. Washburn, #0324140  
7700 Bonhomme Ave., 7th Floor  
St. Louis, MO 63105  
(314) 727-0101  
FAX (314) 727-1086  
Attorneys for AmeriCredit

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re

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**MEMORANDUM OF LAW**

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**INTRODUCTION**

AmeriCredit Financial Services, Inc., (“AmeriCredit”) has made a motion for relief from the automatic stay. AmeriCredit incorporates herein the facts set forth in the notice of hearing and motion for relief from stay.

There is one loan that is the subject of this motion secured by a security interest in a motor vehicle. The loan is in default for failure to make payments when due and AmeriCredit has been unable to verify current proof of insurance. AmeriCredit seeks relief from the automatic stay to foreclose its personal property security interest. There is no equity in the vehicle.

**ARGUMENT**

Pursuant to 11 U.S.C. § 362(d)(1), a secured creditor may be granted relief from the automatic stay, including lack of adequate protection. The motion, filed by AmeriCredit, for relief from the automatic stay demonstrates cause for relief from the stay for all reasons set forth in the motion. In the aggregate, these circumstances demonstrate cause for relief from the

automatic stay. **United Savings Assn. of Texas v. Timbers of Innwood Forest Assoc. Ltd. (In re Timbers of Innwood Assoc. Ltd.)**, 484 U.S. 365 (1988).

Also, there is little or no equity in the vehicle that is the subject of this motion and the vehicle is not necessary for an effective reorganization, which allows the stay to be lifted pursuant to 11 U.S.C. § 362(d)(2). **In re Anderson**, 913 F.2d 530, 532 (8th Cir. 1990).

### **CONCLUSION**

Based on the foregoing, AmeriCredit requests that the Court issue an Order lifting and terminating the automatic stay provided by 11 U.S.C. § 362(a) to permit AmeriCredit to enforce and foreclose its personal property security interest.

DATED: September 14, 2004

RIEZMAN BERGER, P.C.

**/e/ Marilyn J. Washburn**  
Marilyn J. Washburn, #0324140  
7700 Bonhomme Ave., 7th Floor  
St. Louis, MO 63105  
(314) 727-0101  
FAX (314) 727-1086  
Attorneys for AmeriCredit

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Case No. 04-34647 DDO

Chapter 7

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, P.C., with an office address of 7700 Bonhomme Avenue, 7<sup>th</sup> Floor, St. Louis, Missouri 63105, declares that, on the date listed below, I served a **Notice of Hearing for Relief from Stay, Memorandum of Law and Proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class postage prepaid and depositing same in the post office at St. Louis, Missouri, addressed to each of them as follows:

(Debtor's Attorney)

Mary Jo A. Jensen-Carter  
1339 E. County Rd. D  
Vadnais Heights, MN 55109

(Chapter 7 Trustee)

John A. Hedback  
2855 Anthony Lane S. Ste. 201  
St. Anthony, MN 55418

(Debtor)

Kathleen Marie Hayes  
11875 Ironwood Avenue North  
Stillwater, MN 55082

Office of the U.S. Trustee

1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 14, 2004.

Signed: /e/ Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Case No. 04-34647 DDO  
Chapter 7

Kathleen Marie Hayes,  
Debtor.

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**ORDER**

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The above entitled matter before the Court for hearing on \_\_\_\_\_, 2004, on the motion of AmeriCredit Financial Services, Inc., ("AmeriCredit"), seeking relief from the automatic stay of 11 U.S.C. § 362(a). Appearances are as noted in the Court's record.

Based on the proceedings had on said date, the statement of counsel and all the files and records herein, the Court now find that cause exists entitling AmeriCredit to relief from the automatic stay.

NOW, THEREFORE, **IT IS HEREBY ORDERED** that:

1. The automatic stay is immediately terminated as to AmeriCredit and AmeriCredit is authorized to proceed with its legal remedies according to state law as to the subject motor vehicle,

a 2000 Mercury Sable, VIN # 1MEFM53S3YG642612.

2. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

DATED at St. Paul, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY THE COURT:

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Dennis D. O'Brien  
United States Bankruptcy Judge



<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b> No. _____ Date <b>MAY 28th, 2002</b>		Seller <b>ZUMBROTA FORD MERCURY</b> <b>1660 MAIN ST. P.O. BOX 128</b> <b>ZUMBROTA MN 55992</b> "We" and "us" mean the Seller above, its successors and assigns.	Buyer <b>KATHLEEN MARIE HAYES</b> <b>1099 BURNQUIST ST #2</b> <b>ST PAUL MN 55106</b> "You" and "your" mean each Buyer above, and guarantor, jointly and individually.
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**SALE:** You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year <b>2000</b> Make <b>MERCURY</b> Model <b>SABLE</b>	VIN <b>1MEFM53S3YG642612</b> Lic. No./Year <b>GEC-654</b> <input type="checkbox"/> New <input checked="" type="checkbox"/> Used	Other:
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Description of Trade-In

**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

**PROMISE TO PAY AND PAYMENT TERMS:** You promise to pay us the principal amount of \$ 15377.35, plus finance charges accruing on the unpaid balance at the rate of 9.50 % per year from today's date until paid in full. Finance charges accrue on a day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

**DOWN PAYMENT:** You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

#### TRUTH IN LENDING DISCLOSURES

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate. <u>9.50</u> %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you. <u>3999.65</u> \$	<b>AMOUNT FINANCED</b> The amount of credit provided to you or on your behalf. <u>\$ 15377.35</u>	<b>TOTAL OF PAYMENTS</b> The amount you will have paid when you have made all scheduled payments. <u>\$ 19377.00</u>	<b>TOTAL SALE PRICE</b> The total cost of your purchase on credit, including your down payment of <u>\$ 200.00</u> <u>\$ 19577.00</u>
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**Payment Schedule:** Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
<u>60</u>	<u>322.95</u>	<u>MONTHLY, BEGINNING: JUNE 27th, 2002</u>

**Security:** You are giving a security interest in the Motor Vehicle purchased.

☐ **Late Charge:** If a payment is more than 10 days late, we will charge \$5.72 OR 5% WHICHEVER as agent or collateral agent. This amount may have been assigned to a third party. This amount will be the highest amount allowed by law under Minn. Stat. § 47.59.

**Prepayment:** If you pay off this Contract early, you will not have any penalty. If you pay off this Contract early, you will not be entitled to a refund of any finance charges.

**Contract Provisions:** You can see the terms of this Contract in the Truth in Lending Disclosure. This Contract is subject to the terms and conditions of the Motor Vehicle Service Contract, which will be subject to the terms and conditions of the Motor Vehicle Service Contract.

**CREDIT INSURANCE:** Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

**Credit Life: Insured**  
☐ Single ☐ Joint Prem. \$ N/A Term N/A

**Credit Disability: Insured**  
☐ Single ☐ Joint Prem. \$ N/A Term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offer.

Buyer d/o/b Buyer d/o/b

**PROPERTY INSURANCE:** You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you get insurance from N/A or through us you will pay \$ N/A for N/A of coverage.

This premium is calculated as follows:

☐ \$ N/A Deductible, Collision Coverage \$ N/A

☐ \$ N/A Deductible, Comprehensive Cov. \$ N/A

☐ Fire-Theft and Combined Additional Coverage \$ N/A

☐ \$ N/A

**Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.**

☐ **MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover N/A

This Service Contract will be in effect to N/A

**ASSIGNMENT:** This Contract and Security Agreement is assigned to **AMERICREDIT FINANCIAL SERVICES**. The Assignee, phone N/A. This assignment is made ☒ under the terms of a separate agreement ☐ under the terms of the ASSIGNMENT BY SELLER on page 2. ☐ This assignment is made with recourse.

Seller: By [Signature] Date 05/28/2002

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of \$ 941.85) \$ 15431.85

Service Contract, Paid to: \$ N/A

Cash Price \$ 15431.85

Manufacturer's Rebate \$ N/A

Cash Down Payment \$ 200.00

Deferred Down Payment \$ N/A

a. Total Cash/Rebate Down \$ 200.00

b. Trade-In Allowance \$ N/A

c. Less: Amount owing \$ N/A

Paid to:

d. Net Trade-In (b. minus c.) \$ N/A

e. Net Cash/Trade-In (a. plus d.) \$ 200.00

**Down Payment (e.; disclose as \$0 if negative)** \$ 200.00

**Unpaid Balance of Cash Price** \$ 15231.85

Paid to Public Officials - Filing Fees \$ 120.50

Insurance Premiums\* \$ N/A

Amount to Finance line e. (if e. is negative) \$ N/A

To: ZUMBROTA FORD MERCURY \$ 25.00

To: N/A \$ N/A

To: N/A \$ N/A

**Total Other Charges/Amounts Pd. to Others** \$ 145.50

Less: Prepaid Finance Charges \$ N/A

**Amount Financed** \$ 15377.35

\*We may retain or receive a portion of this amount.

#### NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) **IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.**

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: [Signature] Date 05/28/2002

Signature **KATHLEEN MARIE HAYES** Date

Signature [Signature] Date

Seller: By [Signature] Date 05/28/2002

# ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

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**GENERAL TERMS:** You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the items over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, you have a right to a refund of the excess charge. If you agree, or if you do not make a timely request for a refund, we will apply the refund amount first to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

This Contract is governed by the laws of Minnesota and the United States of America.

**NAME AND LOCATION:** Your name and address indicated on page 1 are your exact legal name and your principal residence. You will provide us with at least 30 days notice prior to changing your name or principal residence.

**PREPAYMENT:** You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance, but no refund will be paid if the amount of the refund would be less than \$5.00.

**OWNERSHIP AND DUTIES TOWARD PROPERTY:** By giving us a security interest in the Property, you represent and agree to the following:

- Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or affixed to the Vehicle.
- You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
- The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
- You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
- You will not attempt to sell the Property (unless it is property identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
- You will pay all taxes and assessments on the Property as they become due.
- You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

**DEFAULT:** You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- You fail to perform any obligation that you have undertaken in this Contract.
- We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.

If you default, you agree to pay our costs for collecting amounts owing, including court costs, attorneys' fees, and fees for repossession, repair, storage and sale of the Property securing this Contract. If this Contract is subject to Minn. Stat. § 168.71, the amount of our attorneys' fees you must pay will not exceed 15% of the amount due and payable under this Contract.

If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

**REMEDIES:** If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- We may require you to immediately pay us, less any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will be added to the amount due and payable under this Contract.
- We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
- We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward what you owe us.

E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not give up our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

**RETURNED CHECK CHARGE:** You agree to pay a service charge for each returned check or returned automatic payment request. The amount of the service charge will be \$30.00.

**INSURANCE:** You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. (Generally, loss payee is the one to be paid the policy benefits in case of loss or damage to the property.) In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. If the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. We will notify you if we do so. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full. However, if this Contract is assigned, and the Assignee is not a financial institution as defined by Minn. Stat. § 47.59, this amount will earn finance charges from the date paid at 8% per year.

**OBLIGATIONS INDEPENDENT:** Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- You must pay this Contract even if someone else has also signed it.
- We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- We may release any security and you will still be obligated to pay this Contract.
- If we give up any of our rights, it will not affect your duty to pay this Contract.
- If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

**WAIVER:** To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; (3) give notice that we intend to make, or are making, this Contract immediately due; or, (4) obtain official certification of nonpayments.

## THIRD PARTY AGREEMENT

By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

**IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.**

## ASSIGNMENT BY SELLER

Seller sells and assigns this Retail Installment Contract and Security Agreement, (Contract), to the Assignee, its successors and assigns, including all its rights, title and interest in this Contract, and any guarantee executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made "under the terms of a separate agreement" as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

Seller warrants:

- This Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
- The statements contained in this Contract are true and correct.
- The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
- This sale was completed in accordance with all applicable federal and state laws and regulations.
- This Contract is valid and enforceable in accordance with its terms.
- The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
- This Contract is vested in the Seller free of all liens, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
- A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
- The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
- Seller has or will perfect a security interest in the Property in favor of the Assignee.

If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorneys' fees.

Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the acceptance of this Assignment, notice of non-payment or non-performance and notice of any other remedies available to Assignee.

Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against, and grant extensions of time for payment to be made, to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

WITH RECOURSE: If this Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

## ASSIGNMENT

This ASSIGNMENT is attached to and expressly made a part of that certain Retail Installment Contract pertaining to the sale and financing of a motor vehicle (the "Contract") more particularly described as follows:

Date of Contract

Seller

Buyer(s)

05/28/02 Zumbrota Ford Inc Kathleen M. Hayes

FOR VALUE RECEIVED, the Seller identified above ("Seller") hereby sells, assigns and transfers to AmeriCredit Financial Services, Inc., its successors and assigns ("AmeriCredit"), Seller's entire right, title and interest in and to the Contract and authorizes AmeriCredit to do every act and thing necessary to collect and discharge obligations arising out of or incident to the Contract. The Assignment of the Contract shall be WITHOUT RECOURSE to the Seller unless noted below or except in the circumstances set forth herein. Seller acknowledges that, notwithstanding anything to the contrary contained in said Contract, including references in the Contract to assignees other than AmeriCredit, if any, this Assignment shall be effective to transfer Seller's rights in the Contract to AmeriCredit.

**Warranties:** In order to induce AmeriCredit to accept assignment of the Contract, Seller warrants to AmeriCredit that (1) the Contract is genuine, legally valid and enforceable and arose from the sale of the motor vehicle and other property and services described therein (the "Property"); (2) the Property is as represented to the Buyer(s) described above ("Buyer"); (3) the Buyer has paid the downpayment exactly as stated in the Contract and the downpayment, if paid by check, has cleared a financial institution at time of initial presentment; (4) there is no inaccuracy or misrepresentation in any statements made by or on behalf of Buyer and furnished to AmeriCredit, including those contained in the credit application; (5) all disclosures required by law were properly made to Buyer prior to Buyer signing the Contract; (6) it will file the appropriate title documents within twenty (20) days from the date the Buyer takes possession of the vehicle with the appropriate state/county departments or agencies reflecting AmeriCredit as the first lienholder; (7) no material fact relating to the Property or the Contract was misrepresented to Buyer or omitted from disclosures to Buyer; (8) Seller has the right to assign the Contract to AmeriCredit and a certificate of title to the Property, giving a first lien for the benefit of AmeriCredit, has been or will be applied forthwith if permitted by law; and (9) the requisition fee or discount, if any, charged by AmeriCredit to Seller in connection with the purchase of the Contract was not separately imposed on the Buyer by the Seller. If there is, as determined solely by AmeriCredit, a breach of any warranty of Seller, without regard to Seller's knowledge or lack of knowledge at the time of the breach or AmeriCredit's reliance thereon, Seller hereby agrees unconditionally to reimburse AmeriCredit for the amount of the fee or discount, if any, charged by AmeriCredit to Seller in connection with the purchase of the Contract, whether or not the Seller is in default. Seller agrees to indemnify AmeriCredit for any costs or expenses, including attorney's fees and costs, suffered as a result of a claim or defense of Buyer, Seller or any other person arising out of or incident to this Assignment shall not be affected by waiver, compromise, settlement, extension or variation of the terms of the Contract and Seller waives notice of acceptance of this Assignment and notices of non-payment and non-performance of the Contract.

Zumbrota Ford  
Dealer-Seller

By

Date

Assignment of the Contract shall be WITHOUT RECOURSE unless noted below. (Dealer-Seller and AmeriCredit must initial.)

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class  
U.S. Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

HAYES KATHLEEN MARIE  
1099 BURNQUIST ST APT 2  
ST PAUL MN 55106

GEC654

00 Year	MERC Make	4DSL Model	B2250P513 Title NR.
1MEFM53S3YG642612 VIN		05/28/02 Security Date	NO Rebuilt

1ST SECURED PARTY

**LIEN HOLDER**

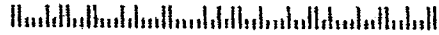
RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

AMERICREDIT FIN SVCS  
PO BOX 182673  
ARLINGTON TX 76096-2673

EXHIBIT

B

23



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re

Case No. 04-34647 DDO

Chapter 7

Kathleen Marie Hayes,

Debtor.

VERIFICATION

I, Rosemary Cooks, an employee of AmeriCredit Financial Services, Inc.  
named in the foregoing Notice of Hearing and Motion for Relief from Stay, declare under  
penalty of perjury that the foregoing is true and correct according to the best of my knowledge,  
information and belief.

DATED: 09/09, 2004

SIGNED: 